

**In the High Court of Uttarakhand, at
Nainital.**

Criminal Misc. Application No. 38/2005

Gurucharan Singh Kohli S/o Diwan Singh Kohli,
R/o Bhotiya parav, Haldwani,
District Nainital .. Applicant.

Vs.

1- District/ Sessions Judge, Nainital
2- Smt. Sapna W/o Prem Shankar Agarwal,
R/o Mahaveer Ganj, Haldwani
District Nainital .. Opp.Parties.

Sri Yogesh Pandey, learned counsel for the applicant.
Sri Lalit Sharma, learned counsel for the respondent
No. 2.

Hon'ble B.C. Kandpal, J.

By way of this petition U/S 482 Cr.P.C. the petitioner has sought the relief for quashing the proceedings of Criminal Case no. 214/2003, Smt. Sapna Agarwal Vs. Gurucharan Singh, U/Ss 420, 467, 468, 471 I.P.C. and Section 138 Negotiable Instruments Act.

2- Heard learned counsel for the parties and perused the record.

3- The record reveals that the first information report was lodged by Smt. Sapna, respondent No.2 against the petitioner U/Ss 420, 467, 468, 471 I.P.C. and Section 138 Negotiable Instruments Act. The trial court after having perused the material available before it, was pleased to summon the petitioner to face the trial. The petitioner preferred the revision against the summoning

order, but the same was also dismissed. The petitioner thereafter approached this court, by way of a petition U/S 482 Cr.P.C. The petition was also dismissed by Hon'ble Justice Irshad Hussain, vide order dated 19-4-2003.

4- The Magistrate at the stage of charge was also of the view that there was a prima facie case to proceed further against the petitioner, hence directed that the charges U/Ss 420, 467, 468 471 I.P.C. and Section 138 Negotiable Instruments Act be framed against the petitioner. The petitioner has thus challenged the order dated 9-08-2004, by which the charges were framed against him, as well as the order dated 18-11-2004, passed by the Sessions Judge in revision, in this petition.

5- After having considered the arguments advanced by the learned counsel for the parties, I am of the view that there is no abuse of process of court in this case. The learned Magistrate at the time of framing the charge was not supposed to consider the evidence meticulously. It reveals from the record that the trial Judge at the time of framing of the charges was satisfied with the material available before it that there was prima facie case to proceed further against the petitioner. I do not find any infirmity in the impugned order dated 9-8-2004 framing the charges against the petitioner.

6- The averments made in the petition are disputed questions of fact which can be assessed and judged by the trial Judge. While exercising the jurisdiction U/S 482 Cr.P.C., I am not supposed to embark upon the enquiry with regard to the credibility of the evidence. It reveals from the record that the trial Judge has taken into consideration the statements of the witnesses and

thereafter reached to the conclusion that prima facie it is evident that the power of attorney in favour of the petitioner appears to be forged and fictitious and on its basis, the complainant was cheated to part with the money for and in connection with transfer of plot of land which in fact was not found to be belonging to the so called executant of the dated of power of attorney in favour of the petitioner.

6- In the peculiar facts and circumstances of this case, it cannot be accepted that the trial Judge acted without jurisdiction in passing the order for framing charges against the petitioner.

7- The petitioner has failed to make out a case for interference in the impugned order dated 9-8-2004, by which charges were framed against the petitioner and the order dated 18-11-2004, passed by the revisional court.

8- I do not find any sufficient ground at this stage for quashing the proceedings of the criminal case pending against the petitioner.

9- The petition lacks merit and is liable to be dismissed.

10- Accordingly the petition is dismissed. The interim order dated 19-1-2005 stands vacated.

(B.C. Kandpal, J.)

Dated: 29-08-2006

ISB